IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5211 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORBHAI BALUBHAI SOLANKI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5211 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS HANSA B PUNANI AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/09/2004

ORAL JUDGEMENT

The petitioner has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 17-3-2004 passed by the Commissioner of Police, Surat City, Surat and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has restricted his arguments only on the point that there is delay in forwarding and disposing of the representation. As per the argument of learned counsel for the petitioner, the petitioner made a representation on 7-4-2004 to the office of Home Minister, which was received by them on 8-4-2004 the and the same was decided by the State on 17-4-2004 and the result of the representation was communicated to the jail authorities on 17-4-2004 which was received by the detenu on 24-4-2004. The delay in deciding the representation has been explained by the authority concerned in the affidavit in reply, but the delay caused in forwarding the same has not been explained by the authority concerned. In support of the contention, learned counsel for the petitioner has placed reliance on a decision reported in AIR 1981 SC 1126 Harish Pahwa Vs. State of U.P. and others, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared

unconstitutional."

4. So the point raised by the petitioner is fully covered by the decision reported AIR 1981 SC 1126 Harish Pahwa Vs. State of U.P. and others, (Supra)and therefore, the petitioner is able to succeed only on that point. Therefore, learned counsel for the petitioner has restricted his arguments only on that point and not pressed other points.

5. The petition is allowed. The impugned order of detention dated 17-3-2004 passed against the detenu is quashed and set aside. The detenu, Thakorbhai Balubhai Solanki is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute. D.S. permitted.

(R.P.Dholakia, J.)

*mithabhai